NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. ANDRE J. MCDONALD Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 224 WDA 2013

Appeal from the Judgment of Sentence January 15, 2013
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0006581-2012

BEFORE: PANELLA, J., DONOHUE, J., and ALLEN, J.

MEMORANDUM BY PANELLA, J. **FILED JULY 02, 2014**

Appellant, Andre J. McDonald, appeals from the judgment of sentence entered on January 15, 2013, by the Honorable Anthony M. Mariani, Court of Common Pleas of Allegheny County. After careful review, we affirm.

On March 6, 2012, at approximately 12:30 p.m., Charles Chapple arrived at the Pittsburgh Municipal Court by order of a subpoena to testify in the case of Thomas Ford. ***See*** N.T., Trial, 10/23/12, at 14-16. Thomas Ford is McDonald's brother, and the cousin of Carl Nelson. ***See id***. Upon arrival at the courthouse, Chapple sat down on the stairs near the metal detector, where he was approached by McDonald. ***See id***., at 16-17. McDonald questioned Chapple as to why he was at the courthouse. When Mr. Chapple told him he had a subpoena for the Ford case, McDonald responded, "you

didn't really have to show up." ***Id***., at 20-21. McDonald then told Chapple, "let's go in the bathroom and talk about this." ***Id***., at 21.

At that time, Officer Kohnen observed McDonald "chest-bump" Chapple into the bathroom as a third man, Nelson, held the door open. ***Id***., at 41-42, 44. Concerned with that behavior, Officer Kohnen went into the bathroom. ***See id***., at 44. He then observed McDonald cornering Chapple, pointing his finger at him and speaking loudly. ***See id***. When Officer Kohnen asked what was going on, Nelson responded, "we're taking care of our uncle." ***Id***., at 45. Chapple appeared frightened and was shaking. ***See id***., at 46. Chapple testified that McDonald repeatedly asked him why he was at the courthouse and that he felt uncomfortable during the encounter. ***See id***., at 25-26. Chapple also testified he felt relieved when Officer Kohnen came into the bathroom. ***See id***., at 26.

After the encounter, Chapple headed outside, where he spoke with a female court officer. ***See id***., at 27-28. Chapple told her he would "rather take the bench warrant and go to jail before [he went] back in or testif[ied]." ***Id***., at 29. At that time, McDonald and Nelson came out of the bathroom and paced back and forth near Chapple. ***See id***.

Following a bench trial, the trial court convicted McDonald of intimidation of a witness.[1] At sentencing, he received two years' probation,

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[1]18Pa.C.S.A. § 4952 (a)(1).

with the condition that he secure and maintain full-time employment. This timely appeal follows.

McDonald first claims the verdict was against the weight of the evidence. Our standard of review for a challenge to the weight of the evidence is well settled. We may not substitute our judgment for that of the fact finder, who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. ***See Commonwealth v. Diggs***, 949 A.2d 873, 879 (2008). The trial court may only award a new trial where the verdict is "so contrary to the evidence as to shock one's sense of justice." ***Id***. A verdict is said to shocks one's sense of justice when "the figure of Justice totters on her pedestal," or when "the jury's verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience." ***Commonwealth v. Cruz***, 919 A.2d 279, 282 (Pa. Super. 2007) (citation omitted). Our review is thus limited to whether the trial court properly exercised its discretion, and relief is only granted where "the facts and inferences of record disclose a palpable abuse of discretion." ***Diggs***, 949 A.2dat 879.

Here, the trial court, sitting as the fact finder, found that the verdict did not shock any rational sense of justice. We find no abuse of discretion with this conclusion.

McDonald next claims the trial court abused its discretion in denying his request for continuance to permit him to obtain discovery materials. Specifically, McDonald claims if his attorney had more time to prepare he could have obtained evidence to prove that McDonald was only at the courthouse on the day of the incident to pay parking tickets. ***See*** Post Sentence Motions, 1/24/13.

The grant or denial of a motion for continuance is within the sound discretion of the trial court and will only be reversed upon a showing of an abuse of discretion. ***See Commonwealth v. Boxley***, 948 A.2d 742, 746 (Pa. 2008). An abuse of discretion is not merely an error of judgment; rather, discretion is abused when "the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will," as shown by the evidence or the record. ***Id***.

In determining whether denial of a continuance in a criminal case was an abuse of discretion, we consider the nature of the crime and the attending circumstances. ***See Commonwealth v. Wright***, 961 A.2d 119, 133 (Pa. 2008). We must also consider the orderly administration of justice and the criminal defendant's right to have adequate time to prepare a defense. ***Id***.

McDonald's counsel, Mr. Sarna, entered his appearance on October 22, 2012, one day before the bench trial. ***See*** R. at 5. He moved for

postponement on the morning of October 23, 2012; however, the court denied the motion.[2] McDonald's counsel alleges that he did not have discovery, did not have an opportunity to speak with the previous attorney on the case or the District Attorney, and did not have time to prepare McDonald, as he did not even meet him until the morning of trial. ***See*** Appellant's Brief at 18. McDonald's counsel further alleges that if he had additional time to prepare he would have found evidence to support the claim that McDonald was only at the courthouse on the day of the incident in order to pay parking tickets. ***See id***., at 18-19.

The record does not support any claim for relief. This was not a complicated case involving many charges, such as first-degree murder, aggravated assault, etc., where we have previously found the denial of continuance was inappropriate. ***See Commonwealth v. Ross***, 57 A.3d 85 (Pa. Super. 2012). The Commonwealth only presented three witnesses at trial. The encounter that brought about the charges against McDonald was brief. Counsel had ample time to prepare. Furthermore, even by the time of the trial court's filing of its 1925(a) opinion, McDonald presented no evidence to support his claim that he went to the courthouse to pay parking tickets. ***See*** 1925(a) Opinion, 6/12/13, at 5. The trial court appropriately

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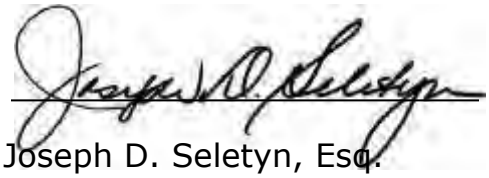
[2] Although the postponement motion is not in the certified record, all parties and the trial court agree that the motion was filed.

denied the request for continuance, and we find no abuse of discretion with this decision.

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/2/2014